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CELJ TESTIMONY TO PUBLIC PROTECTION 2024

**PRESENTED TO THE NEW YORK STATE SENATE FINANCE
COMMITTEE AND THE ASSEMBLY WAYS & MEANS COMMITTEE**

**JOINT LEGISLATIVE BUDGET HEARING ON PUBLIC PROTECTION
Presented by Karen L. Nicolson, Esq.
CEO**

Thank you, Chair Krueger and Chair Weinstein, for the opportunity to submit this testimony to the Joint Legislative Budget Hearing on Public Protection. We present this written testimony on behalf of Karen Nicolson, CEO of the Center for Elder Law & Justice. The Center for Elder Law & Justice (“CELJ”) has been serving the Western New York region for over 40 years, providing free civil legal services to older adults, persons with disabilities, and low-income families. CELJ’s primary goal is to use the legal system to assure that individuals may live independently and with dignity. CELJ also advocates for policy and systems change, particularly in the areas of housing, elder abuse prevention, nursing home reform, and consumer protection. Currently CELJ provides full legal representation in ten counties of Western New York. CELJ’s Free Senior Legal Advice Helpline is open to all of New York State. CELJ operates a central office in downtown Buffalo, with three additional offices in Cattaraugus, Chautauqua, and Niagara counties. CELJ is also a part of the New York Legal Services Coalition, a membership organization made up of more than 45 individual legal services programs representing every county in the state of New York, including small, specialized legal services agencies, large core legal aid organizations and those funded by the federal Legal Services Corporation (LSC).

There has been much attention paid to the justice gap, the variance between those low-income individuals who need a lawyer to access the civil legal system, and those who can find a

free lawyer. To represent them. CELJ greatly appreciates the attention brought to this issue by the Permanent Commission on Access to Justice and we regularly testify and/or submit written testimony to the annual hearings. Those hearings highlight the needs of the clients we serve who are struggling with poverty, ill-health, ageism, and long-standing institutional racism. However, closing the justice gap also requires a close examination of the work force issues faced by every single one of the programs tasked with the important mission of representing those clients in the core civil matters impacting their lives, such as eviction defense, domestic violence prevention, health care access and immigration. Across the state, organizations are struggling to hire and retain attorneys. This is due to the inability of organizations to offer competitive salary and benefits packages, especially when compared to comparable positions in state and municipal government. In 2023, CELJ participated in a project comparing the pay of civil legal services attorneys to comparable Assistant Attorney General (AAG) positions within the Attorney General's Office.

The results demonstrate a shocking chasm:

- In NYC, an AAG makes a starting salary of \$90,000 compared to the average of \$69,000 for the same position at a Civil Legal Services (CLS) provider. After 10 years, an AAG earns \$134,000 per year, while the 10-year veteran at a CLS organization earns \$92,000.
- In “rest of state,” the gap is even wider. A first-year AAG makes \$87,000 to a civil legal services attorneys \$59,000 salary. After 10 years, an AAG earns \$131,000 compared to a \$74,000 annual wage for the CLS attorney.

Simply put, entry level pay for attorneys is 30% to 45% lower than their government counterparts. Those inequities grow as careers advance – at ten years of service, the gaps in pay between civil legal services attorneys and AAGs are as much as 75% in some areas of the state. We are therefore calling for pay equity to justly compensate our workforce. It is the only way that we will ever make great strides in closing the justice gap.

In order to address the issue of pay inequity, we propose the following for the FY 24-25 budget:

- Support the modest increases for civil legal services through the Office of Court Administration (OCA) budget. Specifically, the proposed 6% increase in the Judiciary Civil Legal Services appropriation and the 3% Cost-of-Living Adjustment (COLA) being applied to the Interest on Lawyers Account (IOLA).
- Restore traditional legislative additions for civil legal services, including designated funding for domestic violence legal services.
- Redirect \$2.5 million of the revenue from the Legal Services Assistance Fund (LSAF) to its original purpose to support civil legal service programs with budget language assuring the same.
- *Strongly* oppose and reject the proposed sweep of \$100M from the IOLA Private Contribution Account to the General Fund.

In particular, the Center for Elder Law & Justice is deeply concerned about the *unprecedented* Executive Budget proposal to sweep \$100 million from the Interest on Lawyers Account to the general fund. IOLA funding not only supports essential services that help

low-income New Yorkers obtain help with civil legal problems affecting their most basic needs, such as food, shelter, jobs, and access to health care, it is a critical source of infrastructure dollars that the civil legal services community is in desperate need of. These funds are accumulated for distribution at the next round of grants to civil legal services providers, which are intended to assist in addressing the dual crises of an estimated \$1 billion civil justice gap and community wide salaries that are at least 30% below counterparts in similar public interest and public sector fields.

New York's IOLA Fund was established in 1983, under New York State Finance Law (§ 97-v). With the recognition of the vast need to fund civil legal services, these funds were created for the *sole purpose* of funding civil legal assistance. The legislative intent was as follows:

Legislative findings and declaration. The legislature finds that the availability of civil legal services to poor persons is essential to the due administration of justice. *The purpose of this act is to provide funding for providers of civil legal services* (emphasis added) to ensure effective access to the judicial system for all citizens of the state to the extent practicable within the means available for that purpose.

The Interest on Lawyers Account (IOLA) fund established by this act will be authorized to receive funds from any source for disbursement to nonprofit legal services providers for charitable purposes, including the delivery of legal services in civil matter to poor persons. The IOLA fund will receive the interest earned by qualified client funds held by attorneys in unsegregated interest-bearing accounts designated IOLA accounts. Funds which qualify for deposit in IOLA accounts are those which, in current practice, attorneys do not deposit in segregated accounts because insufficient interest would be earned to justify the expense of administration. When pooled in an IOLA account, funds which would be unproductive as individual accounts will generate income, the *beneficial interest in which will be held by the IOLA fund exclusively for charitable purposes* (emphasis added)

Even during the most extreme financial crises in the past, IOLA funds have *never* been swept or used for any other purpose than to provide civil legal services to low-income New Yorkers. Indeed, doing so seems to be a clear violation of the IOLA enacting legislation.

IOLA distributes the accumulated interest dollars through competitive requests for proposals issued every two years. IOLA also collects and distributes outcomes from the services. In 2023, IOLA grantees closed over 307,000 client cases, benefiting over 639,000 low-income New Yorkers. The top five areas of service from 2023 are housing, immigration, family law, education, and health.

Since its inception, interest rates have fluctuated wildly, in the early days, this resulted in chaotic swings in funding for civil legal services, causing uncertainty for providers and clients. To guard against this, IOLA rightly shifted to a “rainy day” approach that creates a reserve of funds that

can be used to avoid cuts in funding and thus civil legal services during periods where interest rates and thus earnings are low.

The value of and need for civil legal services has never been more front of mind in our state. Recognition that there is no civil Gideon for folks facing bankruptcy, loss of home, healthcare – the essentials of life – has grown among the public and policy makers because of educational efforts. The Access to Justice Gap has now been documented and assessed at \$1 billion over what is currently in the system. As noted in the Permanent Commission on Access to Justice’s 2023 report to the Chief Judge, “the Permanent Commission recently adopted its Funding Working Group’s report finding that between \$842 million and \$1 billion is a realistic estimate of the additional annual funding, over and above existing funding, to close the justice gap.” Notably, this analysis focuses only on those earning up to 250% of poverty and does not include immigration related legal services.

In addition, IOLA has just launched a multi-year Justice Infrastructure project that will assist our under-resourced community with improving the delivery of services and create efficiencies across programs. The accumulated funds are what made it possible for the IOLA Fund to pursue this project. By sweeping 100 million from the IOLA Fund, the Governor is disrupting a shared vision for pay parity and infrastructure investment between IOLA and the civil legal services programs they fund.

Demand and need for our community’s services is vast, but the resources are not there, leaving far too many New Yorkers facing life altering legal junctures without an attorney who understands the process. Moreover, our extremely low salaries are interfering with our Diversity, Inclusion and Equity (DEI) efforts, and CELJ has been unable to retain any diverse attorneys for longer than three years. Exit interviews with former employees of color indicate

that while the work is incredibly satisfying, the salaries at government jobs (which also have federal loan forgiveness) simply make the option of staying at CELJ untenable. I have been the Executive Director/ CEO of this organization for 24 years, and I have never faced a hiring crisis of this magnitude. We have multiple open positions for several months at a time and our vacancies mean that we must turn away clients.

Moreover, with the well-deserved and long overdue increase in rates for assigned counsel in criminal matters, civil legal services salaries have fallen even further behind. Attorneys at CELJ start at \$60,000, or \$28.85 per hour. Compare that to the Assigned Counsel rate of \$158 per hour and it is obvious why we cannot hire or retain attorneys.

There should not be a two-tiered system of representation, one for government and criminal attorneys and one for civil legal services attorneys. Our staff do the important work of preventing homelessness, protecting clients from domestic violence and elder abuse, and accessing life-saving medical care. Not only do they deserve fair pay, but without fair pay, we cannot meet our mission of providing equal access to justice for all, regardless of income. Thank you.